Supreme Court, U.S.
FILED

08-778 DEC 15 2008

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In the

SUPREME COURT OF THE UNITED STATES

Patrick R. and Patricia L. Turner

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals for
the Sixth Circuit

WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the recent rulings in the US Tax Court in *Willis v. CIR* and in the 10th Circuit in *Lewis v. CIR* overturn the catchall long standing "statutory origin theory" position of lower courts and find that 44 USC §§ 3501 – 3520 namely the Paperwork Reduction Act of 1995 (PRA) is applicable to Tax Forms, specifically the Form 1040 Individual Income Tax Return Form for 2003, and only the form, not the instruction booklet, regulations, etc., overturning the lower court ruling of alleged frivolous PRA claims by Petitioners?

2. Whether OMB can approve compliance of Form 1040 based on an instruction booklet that has no requirement to comply claiming the Form 1040 must comply with the PRA per Willis and Lewis, the instruction book provides missing elements for the Form 1040 for compliance per Willis and Lewis, however, the instruction booklet has no requirement to comply with the PRA per *Wunder*, *Dawes*, *Holden* et. al., and the instruction booklet is not submitted to, or seen by, the OMB, and does not carry an OMB number?

3. How many violations of 44 USC §§§ 3506, 3507 and 3512 does it take before the public can legally follow this court's suggestion in Dole v. Steelworkers, 494 U.S. 26 (1990)to "[fn6] Page 40 See id., at 20 ("The Act "allow[s] the public, by

refusing to answer these [information collection requests], to help control `outlaw forms'")?

4. Does 44 U.S.C. § 3512, Public Protection apply to the Public who properly file Form 1040 but do not do so timely?

5. What relief does a Petitioner have when the US Tax Court and 6th Circuit Court of Appeals grossly misrepresent Petitioners claims to sweep Petitioners into a catch all precedent (namely the PRA doesn't apply to 1040 instruction booklet; a claim to which Petitioners have never made) in order to rule Petitioners real claims frivolous and without merit?

PARTIES TO THE PROCEEDING

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1. **The recent decisions in *Willis v. CIR*, T.C. Memo. 2008-233 Docket Nos. 7140-06, 7222-06. Filed October 21, 2008 and in *Lewis v. CIR.*, No. 07-9006 (10th Cir. 2008) overturn the catchall long standing "statutory origin theory" position of lower courts claiming tax forms need not comply with the 1995 Paperwork Reduction Act and confirm that the 1995 PRA applies to Tax forms and Petitioners claims have never been frivolous.** 6

2. **The claims in *Willis* and *Lewis* that the instruction booklet can save the non-complying Form 1040 regarding the 1995 PRA makes no logical sense because the IRS publishes that "This booklet does not contain any tax forms" and the courts have well established that the Form 1040 instructions have no PRA compliance requirement. Also the booklet bears no OMB number, has never been evaluated by OMB for compliance, and has never been approved by OMB.** 17

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PETITION FOR WRIT OF CERTIORARI

Petitioners Patrick R. Turner and Patricia L. Turner respectfully requests that a writ of certiorari be issued to the United States Court of Appeals for the Sixth Circuit to set aside a Panel decision to affirm a decision by the United States Tax Court which held that raising the protection provided by 44 U.S.C. § 3512(1995) is frivolous. The Tax Court decision is in opposition to this Court's decision in *Dole v. United Steelworkers*, 494 U.S.26 (1990) and the Tenth Circuit's recent decision such claims are not frivolous in *Lewis v. CIR.*, No. 07-9006 (10th Cir. 2008), "We hold that Form 1040 satisfies the PRA requirements..." The United States Tax Court decided in *Willis v. CIR*, T.C. Memo. 2008-233 Docket Nos. 7140-06, 7222-06. Filed October 21, 2008, "There is no doubt Form 1040 is subject to the PRA, ..." therefore, PRA claims are not frivolous.

REFERENCES TO OPINIONS BELOW

The decision of the United States Tax Court was entered on January 12, 2007. Appendix 1

The United States Tax Court denied a motion to vacate on March 9, 2007. Appendix 19

The Sixth Circuit affirmed the Tax courts decision (Docket No. 21286-06L DC) in its opinion of April 29, 2008 (Case #07-1753). Appendix 20

A Petition for Rehearing/Rehearing En Banc was filed and a subsequent denial of consideration

issued on September 18, 2008 with the Sixth Circuit indicating that they had fully reviewed all aspects of the case. Appendix 24

JURISDICTION

On January 12, 2007, the Tax Court D.C. entered a Decision against Petitioner of which Petitioner appealed to the Sixth Circuit Court of Appeals. On April 29, 2008 the Sixth Circuit Court of Appeals affirmed the Decision of the Tax Court. On September 18, 2008 the Sixth Circuit Court of Appeals denied the Petition for Rehearing/ Rehearing En Banc stating that the issue was fully reviewed.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTION AND STATUTES

At issue is the Paperwork Reduction Act of 1995, Internal Revenue Restructuring and Reform Act of 1998, as well whether penalties under 26 U.S.C. §§ 6651 and 6654 are penalties subject to the Paperwork Reduction Act of 1995 as that term is defined at 44 U.S.C. § 3502(14). The Collection Due Process Provision, 26 U.S.C. § 6330 and the Public Protection Provision, 44 U.S.C. § 3512, are at the center of this controversy.

STATEMENT OF THE CASE

This case involves the initial determination by the Commissioner of the Internal Revenue pursuant to 26 U.S.C. § 6330 that Appellant was required to pay certain amounts (tax and additions to tax) based upon an information request form known as the "tax form" 1040 which lower courts have recently and conclusively determined must comply with 44 USC §§ 3501 – 3520, namely the Paperwork Reduction Act of 1995. See Lewis v. CIR., No. 07-9006 (10th Cir. 2008), "We hold that Form 1040 satisfies the PRA requirements..." and *Willis v. CIR, T.C. Memo. 2008-233 Docket Nos. 7140-06, 7222-06. Filed October 21, 2008.* "There is no doubt Form 1040 is subject to the PRA, ..."

Appellant filed a Form 1040 for 2003. Said Form 1040 for 2003 was not timely but was accepted by the Respondent without changes. Appellant never disputed that they earned certain money during the year 2003 and only disputes whether they were required to supply the information to the Commissioner on the Form 1040 with a year posted as "2003" that is in clear violation of 44 USC §§ 3506 - 3507 based upon the 1995 Paperwork Reduction Act public protection provision § 3512 and the notice written by the Commissioner in the instruction booklet for year 2003[1].

[1] The Petitioners did not claim, and to this day have never claimed, that the 2003 1040 instruction booklet or tax regulations must comply with the Paperwork Reduction Act.

The erroneous determination by the Commissioner that despite the notice by the Commissioner in the instruction booklet as well as the public protection provision, 44 U.S.C § 3512 (1995), led to the proposed addition to tax of interest and penalties under Title 26 § 6651 and § 6654. Petitioners pursued their right in Tax Court to dispute the additions to the tax on grounds those additions were penalties being sought for a not timely filed, invalid, bootleg and outlaw 2003 Form 1040 information collection request known typically as a "tax form."

Petitioners claimed they could not be penalized for not timely supplying the information at issue for the 2003 year because 44 U.S.C. § 3512 stated that a complete defense for such failure would negate any penalty for failure to supply the information if the request was made upon a form with an invalid OMB number. There can be no question that upon inspection of the Form 1040 for 2003 that OMB # 1545-0074 has multiple violations of 44 U.SC. §§§ 3506, 3507, and 3512.

In this case the Commissioner, the Department of Justice Income Tax Attorneys and the Sixth Circuit have not logically disputed that this number is invalid and have simply hung their hats entirely on the notion that the form 1040 does not have to comply with the PRA or, that the Petitioners error claiming the instruction booklet must comply when Petitioners have made no such

claim. Recently, the *Willis* decision in the US Tax Court and the *Lewis* decision in the 10th Circuit now conclude that the Form 1040 for 2003 must indeed comply with the 1995 PRA. In addition, the Form 1040 has an OMB number, makes a statement on the bottom of the form to locate Notices on a given page, eventually found in the instruction booklet, and the instruction booklet (with no requirement to comply with the PRA) clearly states that the Form 1040 for 2003 must comply with the PRA. This is not to say Petitioners accepts that, a Notice required by law to be on the information collection request itself, can escape the law's requirement by appearing elsewhere, other than on the request itself. (i.e., the PRA Notices must be on the Form 1040 for 2003 itself and not in the instruction booklet)

The Sixth Circuit's decision rests upon the theories that Appellants claimed the Form 1040 instruction booklet must comply with the PRA[2], a claim the Appellants have never made, and a subsequent theory that the Form 1040 is not subject to the Paperwork Reduction Act, The latter theory, relevant to Appellants actual claims, is in direct opposition to the decision announced in *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 1990)(doesn't apply to regulations); *Salberg v. United States*, 969 F.2d 379 (7th Cir. 1992); *United States v. Collins*, 920 F.2d

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[2] Oddly enough the Tax Court and 10th Circuit now claim the instruction booklet that has no requirement to comply with the PRA can save the Form 1040's non-compliance with the PRA.

619, 630 & n. 13 (10th Cir. 1990); *U.S. v. Dawes*, 951 F.2d 1189 (10th Cir. 1991); *U.S. v. Holden*, 963 F.2d 1114 (8th Cir. 1992); *United States v. Crocker*, 753 F. Supp. 1209 (D. Del. 1991); the Supreme Court's decision in D*ole v. United Steelworkers*, 494 U.S. 26, 110 S.Ct. 929, 932-33, 108 L.Ed.2d 23 (1990); the words of Congress in its Legislative history on the 1995 PRA, the House Report (Government Reform and Oversight Committee) 104-37 pg 9 or 104th Congress Volume 2 Legislative History pg 171-172., as well as the Commissioner's position on the law as described in the instruction booklet for the year 2003 Tax Return 1040.

So, in direct opposition to the above cited cases the U.S. Tax Court and the 10th Circuit Courts of Appeals are currently changing their argument from Form 1040 has no need to comply, to, complies based on the instruction booklet.

REASONS FOR GRANTING THE PETITION

1. The recent decisions in *Willis v. CIR*, T.C. Memo. 2008-233 Docket Nos. 7140-06, 7222-06. Filed October 21, 2008 and in *Lewis v. CIR.*, No. 07-9006 (10th Cir. 2008) overturn the catchall long standing "statutory origin theory" position of lower courts claiming tax forms need not comply with the 1995 Paperwork Reduction Act and confirm that the 1995 PRA applies to Tax forms and Petitioners claims have never been frivolous.

Lower courts have recently and conclusively determined that the information collection request tax form 1040 for 2003 must comply with 44 USC §§ 3501 – 3520, namely the Paperwork Reduction Act of 1995.

On October 21, 2008 the United States Tax Court stated, "There is no doubt Form 1040 is subject to the PRA, and, indeed, respondent has obtained a control number and provided required information in the instructions for the form." *Willis v. CIR*, T.C. Memo. 2008-233 Docket Nos. 7140-06, 7222-06. Filed October 21, 2008. *Willis* conclusively demonstrates that Petitioners claims are indeed NOT frivolous. Petitioners do contend however that "control number[s]" are not necessarily "VALID" and "instructions" are not information collection requests per the courts as will be discussed herein.

On April 29, 2008 (The very same day the 6th Circuit denied Petitioners relief stating Petitioners were frivolous and the PRA doesn't apply citing Wunder, et. al.) the 10th Circuit in *Lewis v. CIR.*, No. 07-9006 (10th Cir. 2008) stated, "We hold that Form 1040 satisfies the PRA requirements, OMB #1545-0074 is currently valid, ..." The *Lewis* opinion continues claiming that the instruction booklet saves the 1040 form. Petitioners will show the instruction booklet does not and cannot save the Form 1040 for 2003 as this violates well settled case law. Additionally *Lewis* states, "In addition, the PRA was essentially re-written in 1995, and the two

most extensive PRA decisions in this circuit were based on an outdated text of the statute."

In light of the above, the "statutory origin theory" arguments bear some review to understand the backdrop against which the *Lewis* and *Willis* decisions were made. Said review will show the increasing pressure that, due to the miss-citing and miss-applying of older case precedents, the "statutory origin theory" could not control much longer. Most of these original cases actually held that the Form 1040 must comply and that only the regulations and instruction booklet had no PRA compliance requirement.

The Commissioners flagship case, *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 1990), says "...and the regulations [instructions] do not need a [OMB] number because the requirement to file a tax return is mandated by statute, not by regulation.," also saying "The Paperwork Reduction Act, therefore, does not apply to the statutory requirement, but only to the forms themselves, which contained the appropriate numbers." Other decisions from other Circuit Courts of Appeals discuss PRA compliance, *United States v. Collins*, 920 F.2d 619, 630 & n. 13 (10th Cir. 1990) (dictum), "...which included federal income tax forms within the category of information collection requests under the Act." citing Dole, *U.S. v. Dawes*, 951 F.2d 1189 (10th Cir. 1991) ("...we are not persuaded that either the instruction booklet or the regulations fit under this statutory definition."),

U.S. v. Holden, 963 F.2d 1114 (8th Cir. 1992) says, citing Dawes:

> "Although tax forms fall within the PRA's definition of information collection requests, Dole v. United Steelworkers, 494 U.S. 26, 33, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990), tax instruction booklets do not. United States v. Dawes, 951 F.2d 1189, 1192 (10th Cir. 1991)." -- "As long as the 1040 form complies with the [PRA], nothing more is required."

The Supreme Court's decision in Dole v. United Steelworkers, 494 U.S. 26, 110 S.Ct. 929, 932-33, 108 L.Ed.2d 23 (1990), ("Typical information collection requests include tax forms") informs us tax forms must comply. The words of Congress in its Legislative history on the 1995 PRA said, "The Act strengthened...(2) eliminating exemptions from review for several agencies (e.g., the Internal Revenue Service)..." - House Report (Government Reform and Oversight Committee) 104-37 pg 9 or 104th Congress Volume 2 Legislative History pg 171-172, specifically mentions IRS compliance is required.

Over time the "statutory origin theory" grew ever weaker because even among the Circuit Courts there was disagreement on the so-called "theory." For example, the current division of the Sixth circuit in its reading of *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 1990) (cited in Petitioners' case) with the Tenth

Circuit in *U.S. v. Dawes*, 951 F.2d 1189 (10th Cir. 1991). The controversy exists because the Sixth Circuit's decision in Petitioners' case as well as in the *Wunder* Case creates the illogical outcome that depending on what part of the United States you call home, federal laws mean something different. So, depending on the taxpayer's location, the Internal Revenue Code penalties are subject to the public protection provision of the Paperwork Reduction Act ("PRA")(1995) in the 10th Circuit while the same penalties are not subject to the public protection of the PRA in the Sixth Circuit. The Petitioner's case and the *Wunder* case goes head to head with *U.S. v. Dawes*, 951 F.2d 1189 (10th Cir. 1991) as well as *Lewis* and *Willis* above.

The 10th Circuit considered the *Wunder* decision and concluded that

> "We would be inclined to follow the general analysis of *Wunder* and *Hicks* and hold that the operation of the PRA in these circumstances did not repeal the criminal sanctions for failing to file an income tax return because the obligation to file is a statutory one. **However, we are not compelled to rest our opinion on the statutory origin theory** because we find the analysis of other courts which have considered the issue to be persuasive."

U.S. v. Dawes, 951 F.2d 1189, 1191 (10th Cir. 1991). The 10th Circuit went on to say, "The 1040 form is

the information collection request which arguably must comply with the PRA. It is through the 1040 form that the government obtains all of the tax information it requires..." *Dawes*, supra

The "statutory origin theory" was weakened again because among the Circuit Courts there was no agreement on the "statute" upon which the "statutory origin theory" should rest. The 6th Circuit in *Wunder* cites 6012 alone. The Neff decision by the 11th Circuit, relied upon by the IRS, states that the statutory "mandate" comes from two sections, 6012 and 7203. *U.S. v. Neff*, 954 F.2d 698, 699(11th. 1992). Another case the determination relies upon to support the statutory "duty" imposed by Congress is the decision by the 7th Circuit in Salberg wherein this Circuit held the duty arose from section "7203" alone. Salberg v. U.S. 969 F.2d 379 (7th cir. 1992)

Even the Commissioner of the Internal Revenue has a different take on the "statutory origin." The Commissioner's own words in the instruction manual for the year 2003 1040 tax form on page 77 states:

> Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a) and their regulations. They say that you must file a return or statement with us for any tax you are liable for. Your response is mandatory under these sections.

Therefore, the commissioner believes and states here that the requirement does come from

regulations and not simply a lone single provision of the Internal Revenue Code and therefore the PRA must apply. How is the public to know when and how the duty arises when the courts and the commissioner can't agree? Consider this with the words of this court, The Supreme Court, "Based on the notion that the law is definite and knowable." *Cheek v United States* 498US192 @ pg 199-201. Then the answer becomes, the public can't know.

In 1995 Congress changed the PRA language to "fails to comply" and "display a valid OMB control number issued in accordance with this chapter."

The 1995 Paperwork Reduction Act amended the Paperwork Reduction Act ("PRA") of 1980 for the purpose of consistency and to overturn this Court's decision announced in *Dole v. Steelworkers* regarding third party information requests. Public Law 104-13 at page 8 by first clarifying that the purpose of the 1980 PRA was to "eliminate exemptions" including exemptions previously demanded by the IRS. PRA, Vol. 2, pg. 171.

Congress clarified at page 216 that it amended section 3512 to "unequivocally cover all collection of information". House Report, Vl. 2, pg 217 (page 54) Congress also made certain that all Federal Agencies, including the Internal Revenue Service, were fully aware of their duty to "display a notice that a person is not required to respond to the collection of information unless it displays a control number which is valid." Id. @ 248

Prior to the passage of the 1995 PRA, the 10th Circuit in *Dawes* stated, "As long as the 1040 form complies with the Act, nothing more is required".

The current "statutory origin theory" holding of the Sixth Circuit creates further division with the Supreme Court in *Dole*.

The Supreme Court has previously held:

> Typical information collection requests include tax forms, Medicare forms, financial loan applications, job applications, questionnaires, compliance reports, and tax or business records. See S. Rep., at 3-4. These information requests share at least one characteristic: The information requested is provided to a federal agency, either directly or indirectly.

Dole v. United Steelworkers, 494 U.S.26, 33(1990).

Any claim that the information collection request form known as the tax form 1040 for 2003 is not subject to the PRA is a position without any logic or reasoning, unless the form 1040 is not consider a "tax form". This Court in *Dole* went on to say "In addition, if the agency nevertheless promulgates the paperwork requirement, members of the public may ignore it without risk of penalty. See 44 U.S.C. § 3512 (1982 ed.).[fn6]" with foot note six providing this further clarification of the public's authority and right "(The Act "allow[s] the public, by refusing to answer these [information collection requests], to help control `outlaw forms'").

It seems that so long as a Petition in Tax Court is filed based upon the IRS' decision to issue a Notice of Deficiency under its determinations pursuant to section 6330, the Tax Court Petition creates a "judicial action" where Congress allows a PRA defense to be raised. Tax Court previously disagreed and so does the entire 6th Circuit. *Lewis* and *Willis* require abandoning this position.

The current "statutory origin theory" holding of the Sixth Circuit creates further division with the intentions of Congress with regard to the PRA.

Congress in 1995 strengthened and clarified their position with regard to the PRA and third party collections discussed in Dole clarifying the public's rights and protections. The committee states as recorded in the United States Code Congressional and Administrative News, 104th Congress – First Session 1995 on page 168 "The Committee on Government Reform and Oversight, nearly 20 years later, agrees and believes that more must be done to restore the American People's Faith in their Government. The Paperwork Reduction Act of 1980, being the first step toward that goal..."

The committee then strengthens the PRA's stand with regard to third party collection, to include these in the PRA's venue stating on page 175 that "the Committee believes that the Court misreads Congress' intent in enacting the 1980 Act. H.R. 830 overturns the *Dole* decision and includes

third party disclosure requirements within its provisions ".

The report highlights the aspects of the 1980 PRA with the following statement on page 171:

> The act strengthen the Federal Reports act paperwork clearance process by: (1) consolidating paperwork control in OMB; (2) eliminating exemptions from review for several agencies (e.g. **the Internal Revenue Service**)..." and continuing on to say "(4) creating a public protection provision providing that no penalty may be imposed on a person who fails to respond to an unapproved paperwork requirement"

These words by Congress cannot be misconstrued in any way; the Internal Revenue Service finds no exemptions for their information collection from the PRA. Going on to specifically addressing public protection, the Committee states on page 216:

> The intended scope, purposes, and requirements of section 3512's current provisions on public enforcement... are unchanged...Court decisions have affirmed that the section's intended protection can be asserted effectively in empowering members of the public to defend themselves against unapproved collections of information... The committee supports this provision and the purposes for which it was originally enacted ...

Here, Congress clearly and unequivocally intended to proclaim the IRS was given no pass or exemption regarding information collection request Form 1040 for 2003 and the 1995 PRA fully applies.

At the core of this case is the dispute between this Court and other Circuits regarding the "statutory origin theory" that purports to derive the "requirement to file a return" ("because the requirement to file a tax return is mandated by statute") quoting *Wunder* at 38.

Yet the Sixth Circuit says that Petitioner was frivolous and it was not an abuse of discretion for the Tax Court to hold in favor of the Commissioner's imposition and claim of penalties against Petitioner for his failure to not timely supply information on an information request form because the "requirement to file a return" derives from "statute". *Wunder*, @ 38.

It is not disputed that Petitioner, according to the law, cannot be penalized for not timely supplying information upon any 1040 form if that form does not comply with the Paperwork Reduction Act[3]. The Sixth Circuit's decision and that of the U.S. Tax Court says that due to the statutory requirement there is no procedure in which a person can even attempt to claim the protection Congress afforded the public under 44 U.S.C. § 3512. Section 3512 was phrased in language "no person shall be

[3]1980 or 1995 along with amendments

subject to any penalty for failing to maintain or provide information to any agency if the information collection request involved was made after December 31, 1981, and does not display a current control number assigned by the Director [of OMB]".

The long standing position of the 6th Circuit that all PRA arguments are frivolous needs to finally give way to the truth proclaimed in *Lewis* and *Willis*, the Paperwork Reduction Act of 1995, 44 USC §§ 3501 – 3520 fully applies to the information collection request Form 1040 for 2003.

2. **The claims in *Willis* and *Lewis* that the instruction booklet can save the non-complying Form 1040 regarding the 1995 PRA makes no logical sense because the IRS publishes that "This booklet does not contain any tax forms" and the courts have well established that the Form 1040 instructions have no PRA compliance requirement. Also the booklet bears no OMB number, has never been evaluated by OMB for compliance, and has never been approved by OMB.**

The courts want to have their cake and eat it too. The Tax Court in *Willis* and the 10th Circuit in *Lewis* now admit the Form 1040 must comply with the 1995 PRA (the cake part). They then try to resolve the fact that it does not comply by claiming that the missing compliance elements are contained in the instruction booklet (the "and eat it too" part). Even if the elements were all in the instruction

booklet, which they are not as discussed herein, the courts have emphatically claimed for over 20 years that instructions and regulations are not information collection requests as defined in the PRA, and have no compliance requirement. How can non-compliance required for one document resolve compliance for another "separate" document. This absurd notion will be analyzed in detail herein.

Petitioners contend, by IRS admission and in IRS publications, that the IRS knows it must comply with the 1995 PRA. The IRS also knows that the Form 1040 and the Form 1040 Instruction booklet are separate for purposes of PRA compliance, specifically:

a) The IRS is a U.S. Government Agency
b) The 1040 instruction booklet for the tax year 2003 on pages 77, a publication of the IRS, establishes that the IRS Agency is bound by the Paperwork Reduction Act of 1980 by the IRS's own admission:

> "The IRS Restructuring and Reform Act of 1998, the Privacy Act of 1974, and Paperwork Reduction Act of 1980 require that when we ask you for information we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used..."

It also states:

> "You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a **valid** OMB control number." [Emphasis added]

c) The front cover of the 1040 instruction booklet for the tax year 2003, indicates that, "Note: This booklet does not contain any tax forms," indicating that the Form 1040 and Instruction Booklet are separate and are not to be considered the same document by OMB for purpose of OMB approval. With this notice prominently on the cover, how would the public know the instruction booklet is part of the PRA compliance element for the Form 1040? They would not.

d) The 1040 instruction booklet for the tax year 2003 has not been submitted to OMB for approval by the OMB and does not contain any OMB control number and therefore is not part of the 83i form submission to the OMB for the Form 1040 for the same years, further indicating that the Form 1040 and Instruction Booklet are separate and not to be considered the same document for purposes of OMB approval.

e) At the bottom of the 1040 for the tax year 2003 it says to refer to a certain page: "For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 77," but does not say where said pages can be found; why? Why not just say "on

page 77 of the instruction booklet?" There is certainly room for the additional four words. This omission is tantamount to subterfuge and further indicates the IRS intended separation of the Form 1040 and the Form 1040 instruction booklet.

f) Therefore, even though the PRA is discussed in the instruction booklet for Form 1040 for the tax year 2003, such discussion can not be considered (even if it was complete and sufficient, which it is not) as part of the PRA compliance of the Form 1040 given that OMB does not get, consider, or approve the Form 1040 Instruction Booklet.

g) The fact that the Form 1040 for the tax year 2003 caries the OMB number 1545-0074 proves beyond a shadow of a doubt that the IRS has always known that the Form 1040 must be approved by OMB and must comply with the 1995 PRA, and the IRS has submitted application 83i and other documents in the attempt to get a valid OMB number as required by 44 U.S.C. § 3506(c)(1)(B)(V). But as shown herein simply displaying a number does not mean the number is valid.

h) The fact that the instruction booklet for Form 1040 for the tax year 2003 does not carry an OMB number proves beyond a shadow of a doubt that the IRS has always known that the instruction booklet for Form 1040 has NO requirement to be approved by OMB and is

separate from the form, and has not been approved.

How can the public be expected to assume that compliance of the Form 1040 for 2003 is to include the instruction booklet when the Commissioner goes so far to indicate that the two documents are distinct and separate as a matter of law.

The courts for nearly 20 years have drawn the same conclusion. The instruction manual requests no information and has been determined by many courts to not have a PRA compliance requirement, U.S. v. Dawes, 951 F.2d 1189 (10th Cir. 1991) ("...we are not persuaded that either the instruction booklet or the regulations fit under this statutory definition."). *U.S. v. Wunder*, 919 F.2d 34 (6th Cir. 1990), says "...and the regulations [instructions] do not need a [OMB] number because the requirement to file a tax return is mandated by statute, not by regulation.," as well as with other decisions from other Circuit Courts of Appeals, *U.S. v. Holden*, 963 F.2d 1114 (8th Cir. 1992) says, citing Dawes:

> "Although tax forms fall within the PRA's definition of information collection requests, Dole v. United Steelworkers, 494 U.S. 26, 33, 110 S.Ct. 929, 933, 108 L.Ed.2d 23 (1990), tax instruction booklets do not. United States v. Dawes, 951 F.2d 1189, 1192 (10th Cir. 1991)." -- "As long as the

> 1040 form complies with the [PRA], nothing more is required."

The US Tax Court has summarized the position well in *Freas v. Commissioner*, T.C. Memo. 1993-552.

> "'A number of courts have addressed petitioner's argument and have held that the PRA does not apply to either Federal income tax regulations or to the instructions accompanying Federal tax forms because such documents are not information collection requests; rather, they are designed to help taxpayers complete tax forms and more easily comply with information collection requests. See Salberg v. United States, 969 F.2d 379 (7th Cir. 1992); United States v. Holden, 963 F.2d 1114 (8th Cir. 1992); United States v. Dawes, 951 F.2d 1189 (10th Cir. 1991); United States v. Crocker, 753 F. Supp. 1209 (D. Del. 1991); see also Dole v.United Steelworkers, 494 U.S. 26 (1990).'

Furthermore, the instruction booklet for 2003 makes notice to the public of the 1980 PRA and not the 1995 PRA. Just so Petitioner is perfectly clear on this subject, Petitioner points this Court to Revenue Ruling 2006-21, issued on April 10, 2006, by Chief Counsel for the Internal Revenue Service, that says the 1980 PRA is controlling and not the 1995 PRA.

Then, as stated, the Commissioner provides this statement, "You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number."[4]

This statement just quoted by the Commissioner has been, and still is, Petitioner's position for which Petitioner has been scolded by every branch of Government to which Petitioner has made this statement. These statements plainly indicate that the PRA applies to the Form 1040 and that if the OMB control number on the form is NOT valid that Petitioner is protected from any penalty, with the Commissioner adding the statement that Petitioner does not have to provide the information.

The 1040 instruction booklet does not and cannot save the 1995 PRA compliance requirement of the information collection request tax form 1040 for 2003. They are separate per the CIR. The courts have always said only the form must comply and the instruction booklet has never had to comply. Finally if the OMB never sees, approves, or authorized a control number for the booklet, it just can't be used for the form compliance, to claim otherwise is silly.

---

[4] Which, by the way, uses language from the 1995 PRA and not the 1980 PRA as referenced on the same page of the instruction manual?

3. The Information Collection Request Form 1040 for 2003 has many violations of 44 USC §§§ 3506, 3507 and 3512 allowing the public to legally follow this court's suggestion in Dole v. Steelworkers, 494 U.S. 26 (1990), "[fn6] Page 40 See id., at 20 ("The Act "allow[s] the public, by refusing to answer these [information collection requests], to help control `outlaw forms'").

The PRA is codified in title 44 sections 3500. USC 44 § 3506(c)(1)(B)(i-iii)(I-V) states that the Director is to "evaluate" fairly whether proposed collections of information should be approved under this chapter to-:

> "ensure that each information collection-(i) is inventoried, displays a control number and, if appropriate, an expiration date; (ii) indicate the collection is in accordance with the clearance requirements of section 3507; and (iii) informs the person receiving the collection of information of - (I) the reasons the information is being collected; (II) the way such information is to be used; (III) an estimate, to the extent practicable, of the burden of the collection; (IV) whether the responses to the collection of information are voluntary, required to obtain a benefit, or mandatory; and (V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a valid control number."

The information collection request tax Form 1040 for the tax year 2003, and only the Form, DOES NOT:

a) indicate the collection is in accordance with the clearance requirements of section 3507†,
b) inform a person... the reasons the information is being collected,
c) inform a person... the way such information is to be used,
d) inform a person... an estimate, to the extent practicable, of the burden of the collection,
e) inform a person... whether the responses to the collection of information are voluntary, required to obtain a benefit, or mandatory,
f) inform a person...the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number, and
g) have a proper expiration date. † The expiration date appears to be perpetual as the Form 1040 isn't even published until after the close of the year displayed on the form and there is no clear indication when it expires; perhaps never.

("†" indicates instruction booklet also doesn't comply)

The 2003 Form 1040, violates section US 44 § 3507(h)(3) by containing information upon them that violates USC 44 related to changes to the form never seen by the Director of OMB; such as, the

yearly change in the standard deduction/exempt amount, changes in page numbers referenced indicating substantive changes have occurred elsewhere, changes in years and dates and miscellaneous changes in wording. A single change to the Form 1040 should mandate re-approval by OMB as discussed below.

The form does not comply with the act and violates the PRA mandates on several counts including:

1) The standard deduction, exemption amount ($3,050 for 2003, $3,000 for 2002, and $3,100 for 2004), threshold filing number ($104,625 for 2003, $103,000 for 2002, and $107,025 for 2004), changes every year on the form but are never reported to OMB nor are the source(s) of these new numbers provided on any application to OMB;

2) The forms from 1981 through 1995 did not contain a statement that the form was not subject to the PRA, and the Forms since 1995 have not contained the statement that a person is not required to respond to the collection of information unless it displays a control number which is valid.

3) In 2005 the OMB #1545-0074 has grown wings and taken flight landing on just about every IRS form available further adding to the abuse of this OMB number and calling into attention how a rubber stamp plays against the terms of the 1995 Act of "valid". How can all these forms be considered one information collection request when many

require an individual signature by the public attesting to only the information on that single request? Does a signature on any of the OMB #1545-0074 forms attest to information on another request carrying the same number? I think not.

Section 3507(g) specifically provides that a control number can be used for no more than 3 years. The 1040 form has had the same number, 1545-0074, since 1982 and therefore has had the same number for 24 years and therefore is not valid.

Here we find that a number that is determined to expire in at most 3 years never expires but the 1040 form changes each year on a entirely different (each form having a different standard/exemption amount on the backside of the form, different wording in places and a different year) collection of information request. Since each year's form is completely different, proper yearly re-approval of OMB is required since the OMB number becomes the purported approval number assigned to that form. Petitioner could not submit a year 1999 form for the year 2003, however, the forms have the same identical identification number assigned.

Title 44 Section 3512 (1995) states that:

> A. Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this chapter if--
>
> i) The collection of information does not display a valid control number

> assigned by the Director in accordance with this chapter; or
>
> ii) The agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

The language of section 3512 at the time of the passage of the decision announced in *Wunder* required all forms that an agency believed were not subject to the PRA, to state on the form that the request was not subject to the PRA. The Sixth Circuit's decision in *Wunder* then renders meaningless the statement "or fails to state that such request is not subject to this chapter".

It should be clear by the changes made to the PRA public protection provision that Congress removed this language from section 3512 because no agency was exempt.

It is not disputed by the Government that the form 1040 for 2003 contains the purported number 1545-0074. Only recently the Government has switched gears and now contends the PRA applies but the number is valid. In Petitioners' case they only dispute whether the Form 1040 is subject to the Paperwork Reduction Act. The Form 1040 for 2003, does not contain any statement that says "this request is not subject to the Paperwork Reduction Act."

The 6th Circuit said in the Petitioners case,

> "Instead, they [Petitioners] put forth frivolous and groundless arguments to protest the imposition of income tax. Contrary to the Turners' claim, regulations and instructions concerning the filing of income tax returns do not constitute information requests within the meaning of the Paperwork Reduction Act. See United States v. Wunder, 919 F.2d 34, 38 (6th Cir. 1990); see also United States v. Dawes, 951 F.2d 1189 (10th Cir. 1991); United States v. Kerwin, 945 F.2d 92 (5th Cir. 1991). Thus, the Turners' claim is without merit." Appendix pg. 23

How could a request for information that presents itself to have complied with the Paperwork Reduction Act be then held by the Sixth Circuit that it is not subject to the Paperwork Reduction Act? It is simply not logical and clearly discretion is being abused. How would the public know? They would not.

With all these undisputed violations infecting Form 1040 for 2003, Petitioner had a legitimate claim to raise under section 3512 within Tax Court to oppose the Commissioner's claims advanced under 26 U.S.C. § 6330 and the Tax Court holding otherwise was in error.

4. **44 U.S.C. § 3512, Public Protection must apply to the Public who properly files Form 1040 but does not do so timely.**

It seems simple and logical that an American Citizen cannot be penalized for failure to act when the act he is claimed to have failed to do, was not required by law (statutory origin, specific provision of the tax code, knowledge of the law).

It is not disputed that Petitioner, according to the law, cannot be penalized for failure to timely supply information upon any Form 1040 if that form does not comply with the Paperwork Reduction Act of 1995. Both *Dawes* and *Wunder* were dealing with the repeal of criminal penalties while the penalties at issue between Petitioner and the Commissioner of the Internal Revenue and now the U.S. Tax Court, are civil penalties, not criminal. Please do not misunderstand Petitioner. Petitioner claims that section 3512 prohibits, not repeals, any penalty, criminal or civil, if the alleged act derives from claims that include the willful failure to timely supply information to the requesting agency so long as the agency's request complained of does not comply with the law.

5 CFR 1320.3(j) as well as the PRA of 1995 at 44 U.S.C. § 3502(14) defines "penalty" as "a fine or other punishment; a judgment of monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit."

26 U.S.C. section 6651 defines "addition to tax" as in the case of failure "to file any return required or to pay tax" Section 6654 is couched in language

as a penalty for failure to pay tax and is described as an "addition to the tax." The Tax Court Order said regarding Petitioners case, "On March 7, 2005, Responded assessed the tax reported by Petitioners on their 2003 return, **together with additions to tax ("penalties")**" Appendix pg 5, Emphasis added. Petitioner did dispute the "additions" to the "tax" and the Sixth Circuit directs Petitioner to no other place where Petitioner has the forum to dispute these additions. It can hardly be said that these "additions" to the tax are different than the type of "penalties" at issue in 44 U.S.C. § 3512.

Tax Court is a Court required to consider PRA violations advanced by Petitioner challenging the validity of the OMB number on Form 1040. Tax Court is given jurisdiction by Congress over Notice of Deficiency procedures under 26 U.S.C. § 6213. What gave rise to this jurisdiction is the Commissioner's exercise under 26 U.S.C. § 6330. Congress even allows the burden to shift involving penalties in "any court proceeding" under 26 U.S.C. § 7491(c).

Congress, under section 3512 (PRA 1995) mandates that the PRA "public protection" is allowed as a "complete defense, bar or otherwise, at any time during the administrative process or any judicial action applicable thereto." 44 USC § 3512(b)

Tax Court is a Court of limited jurisdiction but it is a type of Court. Congress has limited its jurisdiction and prevented Tax Court from being a

Court in equity. The Petition filed by Petitioner with Tax Court qualifies as a "judicial action" and the Tax Court was in error to refuse to consider Petitioner's claims of invalidity of the 2003 Form 1040 as regarding penalties and interest pursuant to the requirement to file Form 1040 with OMB # 1545-0074.

The Tax Court also failed to consider the changes made to the 1995 PRA when making its decision based upon the 1980 PRA. The IRS circulated a "revenue ruling" dated April 10, 2006, in which it stated its position on the PRA was stemming from the 1980 PRA.

The Sixth Circuit was in error when it decided to uphold the Tax Court's decision premised on the false assertion that Appellants claimed the Form 1040 instruction booklet must comply with the PRA. Appellants have never made such a claim. Appellants claim that the 2003 Form 1040 violates the PRA and the OMB number on the Form is invalid. The Form 1040 must comply with the PRA of 1995 per *Willis* and *Lewis* and is not saved by the instruction booklet per *Dawes, Freas, Holden, et. al.*

It must be clear that the statutory origin theorists are ignoring what was not in law prior to the PRA of 1995 as well as ignoring the reasons for the changes in the PRA that was enacted to settle any debate on this issue. However, this really becomes a non-issue in light of *Lewis* and *Wills* any way.

It must be clear that the Petitioners filed a Form 1040 for 2003 that was accepted by the IRS with no changes making this a civil matter. The Petitioners claimed that the 44 USC § 3512 public protection protects them from any penalties (i.e., additions to tax, namely interest and penalties). The US Tax Court and 6th Circuit denied Petitioners that protection by misrepresenting Petitioners claim to sweep Petitioners in to the catch-all "PRA claim are frivolous" *Wunder*, et. al. precedent. *Lewis* and *Willis* require abandoning the "frivolous" position. The Petitioners have conclusively proved that the Form 1040 violates §§§ 3512, 3506, and 3507. And, the Petitioners have proven the 1040 instruction booklet cannot save the 1040 form for 2003 for PRA compliance. The only relief Petitioners have is to ask this court to direct the lower courts as to when, and under what circumstances, the 1995 PRA public protections apply to tax forms.

There are no exemptions and section 3512 is a "complete defense."

5. **Petitioner should receive relief from this court when the US Tax Court and 6th Circuit Court of Appeals grossly misrepresent Petitioners claims to sweep Petitioners into a catch all precedent (namely the PRA doesn't apply to the 1040 instruction booklet; a claim to which Petitioners have never made) in order to rule Petitioners real claims frivolous and without merit**

On Petitioners Request For Collection Due Process Hearing - form12153 they state, "I do not agree with the levy on the grounds that if violates 44 USC 3512. See pg 77 of the instruction booklet of form 1040."

The Letter of Determination from the IRS stated, "Some court have simply noted that the Paperwork Reduction Act of 1980 (PRA) applies to the forms themselves, not to the instruction booklets," adding the "statutory origin theory" arguments as well.

Petitioners' US Tax Court petition says, "Petitioners' claimed in their Form 12153 that the 'levy' 'violates 44 U.S.C. § 3512' (1995). Petitioners' further directed explanation for these claims could be found in the instruction booklets for the year 2003 issued by Respondent to the public and Petitioner." Petitioners also stated, "Petitioners' claim that the 1040 Form for 2003 did not comply with the PRA of 1995." No argument that the instruction booklet must comply was presented.

The US Tax Court Order states, "Petitioners raised only frivolous issues related to the Paperwork Reduction Act of 1980" pg 5 @ 15 (see Appendix pgs 6,7) and "In sum, suffice it to say:... (2) Petitioners are required to file an income tax return and pay tax; Secs. 1, 6012(a)(1)" pg 10 @ 2-4 (See Appendix pg 14). These statements error because Petitioners always claimed the 1995 PRA was controlling.

The Petitioners stated in their brief to the 6th Circuit, "The Tax Court also refused to address the fact the Form 1040 did not comply with 44 U.S.C. § 3506(c)(1)(B)(1995) which requires..." and

> "Appellants' wish this Court give Appellant a de novo review of the dismissal by the Tax Court on failure to state a claim and take a look at section 3506 and 3512 comparing those sections to the 2003 Form 1040 and find that the Form does not comply with either these sections."

The 6th Circuit stated in their order in the Petitioners case,

> "Instead, they [Petitioners] put forth frivolous and groundless arguments to protest the imposition of income tax. Contrary to the Turners' claim, regulations and instructions concerning the filing of income tax returns do not constitute information requests within the meaning of the Paperwork Reduction Act. See United States v. Wunder, 919 F.2d 34, 38 (6th Cir. 1990); see also United States v. Dawes, 951 F.2d 1189 (10th Cir. 1991); United States v. Kerwin, 945 F.2d 92 (5th Cir. 1991). Thus, the Turners' claim is without merit." Appendix pg. 23.

It takes no scholarly analysis of grammar or interpretation to understand the meaning of Petitioners claims. Clearly Petitioners claimed that the information collection request tax form 1040 for

2003 did not, and does not, comply with 44 USC §§§ 3506, 3507 and 3512 and *evidence* of that fact could be found in the instruction booklet. Petitioners in no way ever claimed the instruction booklet must comply with the PRA for any year.

Petitioners, who are not lawyers, seek relief from this court upon those who would willfully twist Petitioners claims to deny them relief by sweeping Petitioners into a quagmire of inappropriate precedent case law.

CONCLUSION

THEREFORE, Petitioners Patrick R. Turner and Patricia L. Turner, respectfully request this Supreme Court Grant Petitioner's Petition for Writ Certiorari to review and uphold the wishes of Congress to provide the public with protection from any agency, including the Internal Revenue Service, involving issues raised in Tax Court, or any Court, civil or criminal, that are relevant to the PRA, when claims of invalidity are advanced by the person the agency seeks to penalize.

Respectfully submitted,

/s/ Patrick R. Turner, Pro Se

UNITED STATES TAX COURT
WASHINGTON, DC 20217

PATRICK R. AND
PATRICIA L. TURNER,
Petitioners
v.) Docket No. 21826-06L.

COMMISSIONER OF
INTERNAL REVENUE,

Respondent

ORDER OF DISMISSAL AND DECISION

Pursuant to the determination of the Court, as set forth in its bench opinion rendered on January 3, 2007, at Washington, D.C., it is hereby

ORDERED that respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed November 8, 2006, and supplemented November 30, 2006, is granted. it is further

ORDERED and DECIDED that respondent may proceed with collection for the taxable year 2003, as determined in the notice of determination dated August 16, 2006, upon which notice this case is based.

(Signed) Robert N. Armen, Jr.

Robert N. Armen, Jr.
Special Trial Judge

ENTERED: **JAN 12 2007**

UNITED STATES TAX COURT
WASHINGTON, DC 20217
JANUARY 12, 2007

PATRICK R. AND
PATRICIA L. TURNER,
Petitioners)
v.) Docket No. 21826-06L.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent

Notice of Service of Transcript

Pursuant to Rule 152 (b), Rules of Practice and Procedure of this Court, there is transmitted herewith to petitioner and respondent a copy of the pages of the transcript of the hearing of the above case before Special Trial Judge Robert N. Armen, Jr. at Washington, D.C., on January 3, 2007, containing his oral findings of fact and opinion rendered at the conclusion of the hearing.

In accordance with the oral findings of fact and Opinion, an Order of Dismissal and Decision will be entered for respondent.

Robert R. Di Trolio
Clerk of the Court
SERVED JAN 12, 2007

1 Bench Opinion by Special Trial Judge Robert N. Armen
2 (11:30 a.m.)
3 Patrick R. & Patricia L. Turner 21826-06
4 The Court has decided to render oral findings of
5 fact and opinion in this case, and the following represents
6 the Court's oral findings of fact and opinion.
7 This proceeding was heard as a regular case
8 pursuant to the provisions of Section 7443A(b) (4) of the
9 Internal Revenue Code of 1986, as amended, and Rules 180,
10 181, and 182 of the Tax Court Rules of Practice and
11 Procedure.
12 This bench opinion is made pursuant to the
13 authority granted by Section 7459(b) of the Internal Revenue
14 Code of 1986, as amended, and Rule 152 of the Tax Court
15 Rules of Practice and Procedure.
16 Hereinafter in this bench opinion, and unless
17 otherwise indicated, all section numbers refer to the
18 Internal Revenue Code of 1986, as amended, and all rule

19 numbers refer to the Tax Court Rules of Practice and
20 Procedure.
21 Charles Gorham appeared on behalf of Respondent.
22 There was no appearance by or on behalf of Petitioners, nor
23 did Petitioners file a written statement pursuant to the
24 provisions of Rule 50(c) [until after the hearing was concluded][hand written]
25 This case is before the Court on
Respondent's
Heritage Reporting Corporation
(202) 628-4888

1 Motion To Dismiss for Failure To State a Claim Upon Which
2 Relief Can Be Granted, filed November 8, 2006, pursuant to
3 Rule 40, and supplemented November 30, 2006.
4 Petitioners resided in Davisburg, Michigan, at the
5 time that the petition was filed with the Court.
6 The facts relevant to the disposition of
7 Respondent's motion are as follows:
8 Petitioners' Income Tax Liability for 2003. On or
9 about December 2, 2004, Respondent received

Petitioners'
10 Federal income tax return (Form 1040) for the calendar year
11 2003. On the return, Petitioners reported a tax liability,
12 specifically including self-employment tax, of $13,699.
13 Petitioners did not pay any part of the reported liability
14 prior to, or with, the filing of their return.
15 On March 7, 2005, Respondent assessed the tax
16 reported by Petitioners on their 2003 return, together with
17 additions to tax ("penalties") under Section 6651 (a) (1) for
18 failure to timely file; under Section 6651 (a) (2) for failure
19 to pay; and under Section 6654 for failure to pay estimated
20 tax, as well as statutory interest under Section 6601. Also
21 on March 7, 2005, Respondent sent Petitioners a statutory
22 notice of balance due, i.e., notice and demand for payment
23 under Section 6303. Petitioners did not pay the amount
24 owing.
25 Subsequent to the statutory notice of balance

due,

Respondent sent Petitioners several collection notices.

Again, Petitioners did not pay the amount owing.

Final Notice of Intent to Levy. On February 25, 2006, Respondent sent Petitioners a Final Notice/Notice of Intent To Levy and Notice of Your Right to a Hearing (final notice). See Sec. 6330(a). The final notice reflected Petitioners' outstanding liability for tax, additions to tax, and statutory interest of approximately $19,000 for 2003.

Administrative Developments. On March 24, 2006, Respondent received from Petitioners a Form 12153, Request for a Collection Due Process Hearing, in respect of the final notice.

In the Form 12153 and during the administrative stage of this case, Petitioners raised only

frivolous issues
16 related to the Paperwork Reduction Act of 1980.
17 Accordingly, Respondent's Appeals Office
declined to offer
18 Petitioners a face-to-face administrative hearing, which
19 Petitioners had demanded. Rather, Respondent's Appeals
20 Office offered Petitioners a telephone hearing and proceeded
21 to review the case based on the record available to it.
22 On August 16, 2006, Respondent's Appeals Office
23 sent Petitioners a Notice of Determination Concerning
24 Collection Action(s) Under Section 6320 and/or 6330 (notice
25 of determination). In the notice of determination,

1 Respondent's Appeals Office sustained the proposed levy. In
2 so doing, the Appeals Office stated, in part, that "the
3 issues you raised are frivolous and have repeatedly been
4 dismissed by the courts."

Petitioners' Petition. After filing a petition with the United States District Court and having it dismissed for lack of jurisdiction, Petitioners filed a petition for levy action with this Court on October 26, 2006. See Sec. 6330(d), prior to amendment by sec. 855(a) of the Pension Protection Act of 2006 (Pub. L. 109-280).

The petition challenges the existence or amount of Petitioners' underlying liability for 2003. In doing so, it relies exclusively on the Paperwork Reduction Act of 1980, 44 U.S.C. Secs. 3501-3520.

Respondent's Motion for ~~Summary Judgment~~ [Dismiss] [handwritten]

As previously stated, on November 8, 2006, Respondent filed his Motion To Dismiss for Failure To State a Claim Upon Which Relief Can Be Granted, pursuant to Rule 40. Thereafter, on November 30, 2006, Respondent filed a supplement to the motion.

Petitioners' Amended Petition. By order, dated November 15, 2006, the Court directed (inter alia) Petitioners to file with the Court, on or before December 8, 2006, an amended petition setting forth with specificity each error Petitioners allege was made by Respondent in the notice of determination, as well as separate statements of every fact upon which Petitioners base the assignment of each error.

Also in its November 15, 2006 order, the Court afforded Petitioners the opportunity of filing an objection, on or before December 8, 2006, to Respondent's motion to dismiss.

On December 8, 2006, Petitioners filed an amended petition. In the amended petition, Petitioners only expand upon their arguments related to the Paperwork

Reduction Act.

Petitioners did not file any objection to Respondent's motion to dismiss.

Hearing on Respondent's Motion ~~Summary Judgment~~ [to Dismiss] [handwritten]

Pursuant to notice, Respondent's motion to dismiss was called for hearing at the Court's motions session in Washington, D.C., on January 3, 2007. Counsel for Respondent appeared and presented argument in support of the motion. In contrast, there was no appearance by or on behalf of Petitioners, nor did Petitioners file a written statement pursuant to Rule 50 (C), the provisions of which were noted by the Court in its November 15, 2006, order calendaring Respondent's motion for hearing [until after the hearing was concluded][handwritten]

Dismissal for Failure to State a Claim. Rule 40 provides that a party may file a motion to dismiss for failure to state a claim upon which relief can be granted.

We may grant such a motion when it appears beyond doubt that the party's adversary can prove no set of facts in support of a claim that would entitle him or her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Price v. Moody, 677 5 F.2d 676, 677 (8th Cir. 1982)

After carefully reviewing the record in this case, we are satisfied that Petitioners' pleadings do not contain any assignment of error or allegation of fact in support of any justiciable claim. E.g., Nino V. Commissioner, T.C. Memo. 2006-59. Accordingly, we shall grant Respondent's motion to dismiss, as supplemented.

Section 6330 generally provides that the Commissioner cannot proceed with collection by levy until the person has been given notice and the opportunity for an administrative review of the matter (in the form of an

16 Appeals Office hearing) and, if dissatisfied, with judicial
17 review of the administrative determination. See Davis v.
18 Commissioner, 115 T.C. 35, 37 (2000); Goza v. Commissioner,
19 114 T.C. 176, 179 (2000)
20 Section 6330(c) prescribes the matters that a
21 person may raise at an Appeals Office hearing. In sum,
22 Section 6330(c) provides that a person may raise collection
23 issues, such as spousal defenses, the appropriateness of the
24 Commissioner's intended collection action, and possible
25 alternative means of collection. Section 6330(c)(2)(B)

1 provides that the existence and amount of the underlying tax
2 liability can be contested at an Appeals Office hearing if
3 the person did not receive a notice of deficiency for the
4 tax in question or did not otherwise have an earlier

opportunity to dispute the tax liability. See Sego v. Commissioner, 114 T.C. 604, 609 (2000) ; Goza v. Commissioner, supra. Section 6330(d) provides for judicial review of the administrative determination in the Tax Court or a Federal District Court, as may be appropriate. Invoking the Paperwork Reduction Act, Petitioners challenge the existence or amount of their underlying liability for 2003. However, Petitioners' arguments are frivolous and groundless. See James v. United States, 970 F.2d 750, 753 n.6 (10th Cir. 1992); United States v. Neff, 954 F.2d 698, 699 (llthCir. 1992); saxon v. Commissioner, T.C. Memo. 2005-52; Holliday v. Commissioner, T.C. Memo. 2005-240; Freas v. Commissioner, T.C. Memo. 1993-552; Andreas v. Commissioner T.C. Memo. 1993-551; see also Wheeler v. Commissioner T.C. Memo. 2006-109; Schneller v. Commissioner, T.C. Memo. 2006-100, citing Pond v. Affd 2007 WL18928 (10th Cir. April 4, 2007)

[handwritten]

Commissioner, T.C. Memo. 2005-255^;Nino v. Commissioner,

T.C. Memo. 2005-59.

In sum, suffice it to say:

(1) Petitioners are taxpayers subject to the Federal income tax; see Secs. 1, 7701(a) (1), (14);

and

(2) Petitioners are required to file an income tax return and pay income tax; Secs. 1, 6012 (a) (1)

See also Cram v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984) ("We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit.")

Petitioners have failed to raise a spousal defense or offer alternative means of collection. These issues are now deemed conceded. Rule 331(b) (4).

Petitioners have also
13 failed to make a valid challenge to the appropriateness of
14 Respondent's intended collection action or identify any
15 irregularity in the assessment process that would raise a
16 legitimate question about the validity of the assessment or
17 the information contained in the relevant transcript. E.g.,
18 Hughes v. United States, 953 F.2d 531, 536 (9th Cir. 1992)
19 (holding that a notice of balance due constitutes a notice
20 and demand for payment within the meaning of Section
21 6303(a)); Elias v. Connett, 908 F.2d 521, 525 (9th Cir.
22 1990) (holding that a final notice of intent to levy, or
23 similar document, is sufficient to constitute notice and
24 demand for payment within the meaning of Section 6303 (a)
25 because it informs the taxpayer of the amount owed and

requests payment).

In the absence of a valid issue for review, we conclude that Respondent is entitled to judgment as a matter of law sustaining the notice of determination, dated August 16, 2006. Accordingly, we shall grant Respondent's motion to dismiss, as supplemented.

Warning Regarding Penalty Under Section 6673.

Because the arguments advanced by Petitioners throughout the administrative and judicial proceedings are so totally discredited, we feel compelled to make mention of Section 6673.

As relevant herein, Section 6673 (a) (1) authorizes the Tax Court to require a taxpayer to pay to the United States a penalty not in excess of $25,000 whenever it appears that proceedings have been instituted or maintained by the taxpayer primarily for delay or that the taxpayer's position in such proceeding is frivolous or

groundless. The
18 Court has indicated its willingness to impose such penalty
19 in lien and levy cases, Pierson v. Commissioner, us T.C.
20 576, 580-581 (2000), and has, in fact, imposed a penalty in
21 many such cases. E.g., Roberts v. Commissioner, 118 T.C.
22 365 (2002) (imposing a penalty in the amount of $10,000).
23 In the present case, Respondent has not asked for
24 the imposition of a penalty under Section 6673 on
25 Petitioners, and the Court has decided not to impose such a

1 penalty sua sponte. However, Petitioners are expressly
2 warned that if they should return to this Court in the
3 future and advance arguments similar to those advanced in
4 the instant case, then they may find themselves recipients
5 of a substantial penalty under Section 6673.
6 In sum, we shall (1) grant Respondent's

Motion To
7 Dismiss for Failure To State a Claim Upon Which Relief Can
8 Be Granted, filed November 8, 2006, and supplemented
9 November 30, 2006; and (2) decide that Respondent may
10 proceed with collection for the taxable year 2003, as
11 determined in the notice of determination, dated August 16,
12 2006, upon which notice this case is based.
13 This concludes the Court's oral findings of fact
14 and opinion in this case.
15 (Whereupon, at 11:50 a.m., the bench Opinion in
16 the above-entitled matter was concluded.)
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UNITED STATES TAX COURT
WASHINGTON, DC 20217

PATRICK R. AND
PATRICIA L. TURNER,
Petitioners
v.) Docket No. 21826-06L.
COMMISSIONER OF
INTERNAL REVENUE,
Respondent

ORDER

On January 12, 2007, the Court entered an Order Of Dismissal And Decision pursuant to the determination embodied in the Court's bench opinion rendered on January 3, 2007, at Washington, D.C. The Order Of Dismissal And Decision served to grant respondent's Motion To Dismiss For Failure To State A Claim Upon Which Relief Can Be Granted, filed November 8, 2006, and supplemented November 30, 2006, and to decide that respondent may proceed with collection for the taxable year 2003, as determined in the notice of determination dated August 16, 2006, upon which notice this case is based.

On March 5, 2007, petitioners filed a motion to vacate the aforementioned January 12, 2007 order of dismissal and decision.
Petitioners' motion, being without merit, it is hereby

ORDERED that petitioners' motion to vacate the Court's Order Of Dismissal And Decision, entered January 12, 2007, is denied.

(Signed) Robert N. Armen, Jr.
Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C. March 9, 2007

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-1753

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PATRICK TURNER,	)	Filed: April
PATRICIA TURNER,	)	29, 2008
Petitioners-Appellants,	)	LEONARD GREEN,
	)	Clerk
V.	)	
COMMISSIONER OF	)	ON APPEAL FROM
INTERNAL REVENUE,	)	THE UNITED
Respondent-Appellee.	)	STATES TAX
	)	COURT

ORDER

Before: NORRIS, GIBBONS, and GRIFFIN, Circuit Judges.

Patrick Turner and Patricia Turner ("the Turners"), appeal pro se from a Tax Court judgment upholding a deficiency determination after the Turners failed to file a tax return for tax year 2003. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

A final notice of intent to levy was issued to the Turners for unpaid tax relating to their 2003 income taxes.

Following the receipt of the notice, the Turners requested a collection due process hearing under 26 U.S.C. § 6330. On August 16, 2006, the Internal Revenue Service ("IRS") notified the Turners that their request for a hearing was denied because their claims were frivolous and have been repeatedly rejected by the courts. The Turners were also notified that the levy was upheld. The notification informed the Turners that they could dispute the determination by filing a petition with the United States Tax Court. The notice further advised that if the Turners filed their petition with
No. 07-1753
-2-
the wrong court, they would have thirty days after that determination to file a petition with the correct court.

Thereafter, the Turners filed a civil action, in the United States District Court for the Eastern District of Michigan, against the IRS seeking to set aside the Notice of Determination issued by the IRS on August 16, 2006. The district court dismissed the case for lack of jurisdiction pursuant to Fed. R. Civ. P. 12(h)(3), and this court affirmed the dismissal in an order filed June 13, 2007.

Thereafter, the Turners filed a petition, in the United States Tax Court, against the IRS seeking to set-aside the Notice of Determination issued by the IRS on August 16; 2006. The petition challenged the existence or amount of the Turners' underlying liability for 2003. In doing so, it relies exclusively on the Paperwork Reduction Act of 1995, 44 U.S.C. §~ 3501-3520. The IRS moved to dismiss the petition. The IRS argued that the petition did not comply with the requirement of Tax Ct. R. 331(b) that any petition filed in a lien or levy proceeding contain "clear and concise assignments of each and every error which the petitioner

alleges to have been committed in the lien or levy determination." The IRS further argued that, because the only issue the Turners raised in the collection due process administrative proceeding and in the petition was their frivolous argument that the levy was improper because the Form 1040 for 2003 "did not comply with the Paperwork Reduction Act," they had conceded any legally cognizable challenge to the determination.

The Tax Court ordered the Turners to file an amended petition setting forth with specificity each error the Turners allege was made by the Commissioner in the Notice of Determination, as well as separate statements of every fact upon which the Turners base the assignment of each error. Also, the Tax Court afforded the Turners the opportunity of filing an objection to the IRS's motion to dismiss. The Turners filed an amended petition only expanding upon their arguments related to the Paperwork Reduction Act. The Turners did not file any objection to the motion to dismiss.

A hearing was held on the motion to dismiss. Counsel for the IRS appeared and presented argument in support of the motion. There was no appearance by or on behalf of the Turners, nor did the Turners file a written statement pursuant to Tax Ct. R. 50(c), the provisions of which were noted in the Tax Court's previous order calendaring the motion to dismiss. The Tax Court granted the

IRS's motion to dismiss. A subsequent motion to vacate the Tax Court's judgment was denied. This appeal followed.

We generally review the Tax Court's legal conclusions de novo, while examining its factual findings for clear error. See Zack v. Comm 'r, 291 F .3 d 407, 412 (6th Cir. 2002).

Upon review, we conclude that the Tax Court properly dismissed the Turners' petition. The Turners did not advance claims to undermine the Commissioner's determinations in the notice of deficiency, which are presumptively correct, see Helvering v. Taylor, 293 U.S. 507, 515 (1935).

They did not even-assert clear and concise claims of specific error to meet their pleading obligation----- under Rule 33 1(b) of the Tax Court Rules. Instead, they put forth frivolous and groundless arguments to protest the imposition of income tax. Contrary to the Turners' claim, regulations and instructions concerning the filing of income tax returns do not constitute information requests within the meaning of the Paperwork Reduction Act. See United States v. Wunder, 919 F.2d 34, 38 (6th Cir. 1990); see also United States v. Dawes, 951 F.2d 1189 (10th Cir. 1991); United States v. Kerwin, 945 F.2d 92 (5th Cir. 1991). Thus, the Turners' claim is without merit.

Accordingly, the Tax Court judgment upholding a deficiency determination after the Turners failed to file a tax return for tax year 2003 is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

__Leonard Green__

Clerk

No. 07-1753

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PATRICK TURNER, ET AL., Petitioners-Appellants,	)	Filed: September 18, 2008 LEONARD GREEN, Clerk
V.	)	ORDER
COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	)	

BEFORE: NORRIS, GIBBONS, and GRIFFIN, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

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